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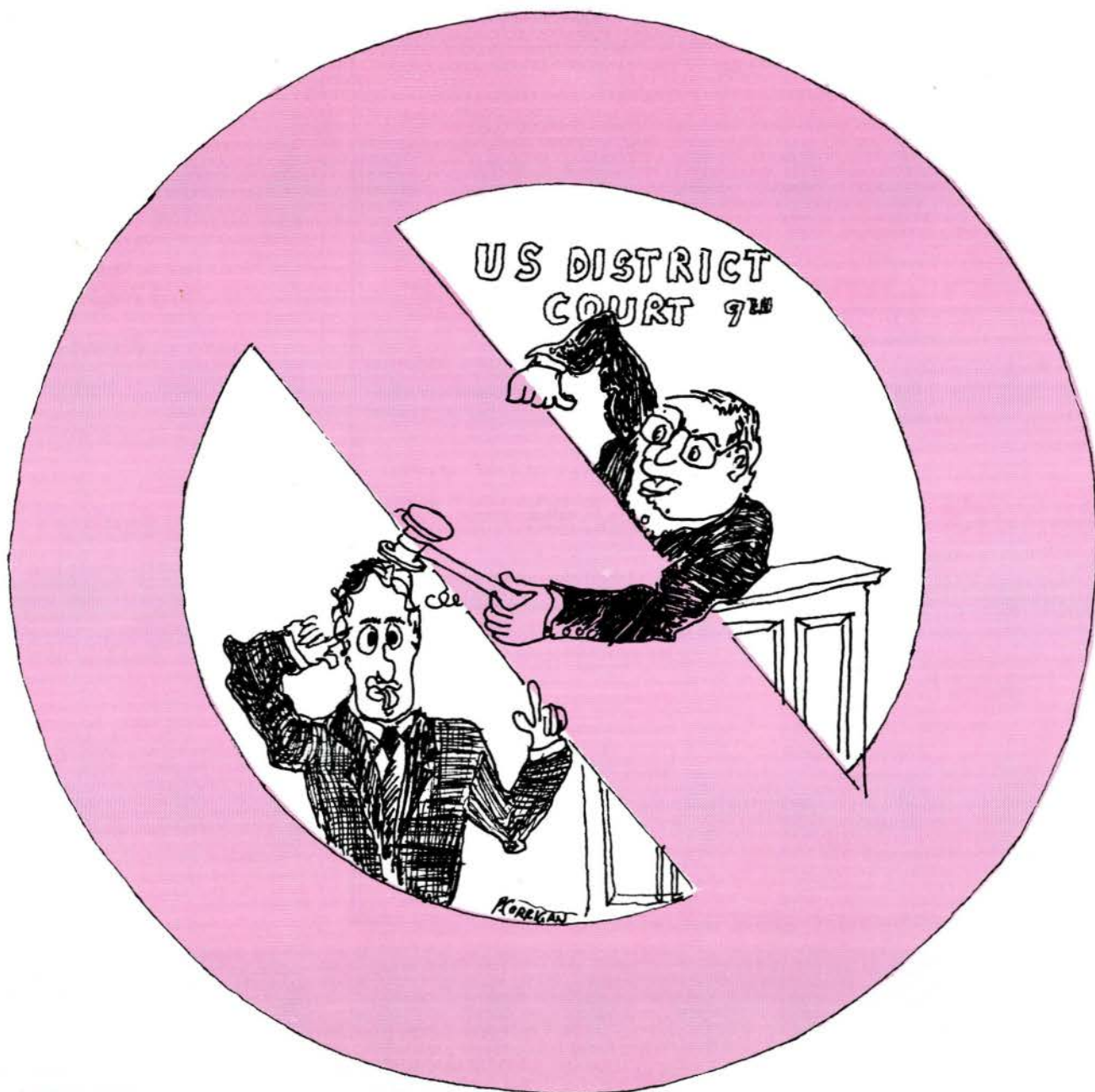
GAVEL

Cleveland-Marshall College of Law

Volume 36

Issue 4

February, 1988



Malpractice

Legal Profession is Quick to Sue Brethren

Editor's Note

It is interesting to note that the Illinois Legislature has come up with some original twists to their drug laws. They now require any person who intends to sell marijuana, cocaine, or any other type of illicit drug to purchase labels which identify the substance and warn the possessor of the dangers of drugs.

Of course it is unlikely that the long lines that await auto license plate purchasers will similarly await eagerly complying drug dealers at the state offices that sell and distribute these labels. However, if an individual gets caught selling drugs, the failure to have these labels on their illegal substances calls for an additional sentence of two to three years in prison on top of the sentence he or she might face for possession and sale of those drugs.

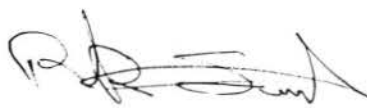
These labelling laws seem to be a good idea. Any other consumer good sold to the public for consumption requires labelling which identifies the product and warns the purchaser of any known dangers of that product. Additionally, any pharmacy which sells prescription drugs to the public has similar requirements for labelling the prescriptions the public purchases from them. So then, why shouldn't persons engaging in the illegal sale of drugs be required to follow the same requirements?

An undercover narcotics officer certainly would want to know that the substances he was purchasing were what the seller purported them to be. This simple labelling statute would assure him of that fact. Others likely to be substantial beneficiaries to the new law are the dealers' faithful clientele. Now they will have the opportunity to read a warning label and see that drugs may be harmful to their health before they smoke, snort, or swallow their next purchase.

If this idea catches on maybe the other 49 states can get into the act. And of course don't forget the FDA. They could require additional labelling and before you know it drug dealers will be spurting out the often heard complaints of other industries, over-regulation.

Laws such as the one in Illinois certainly put the seller in a bind. I can't say that I feel sorry for their dilemma. But I will say that Illinois' decision to deal with the seemingly overwhelming problem of drugs in our society is a positive step towards controlling the situation.

Although it seems that more convictions for the labelling violations will be obtained, which means more people in prisons, it is unfortunate and unlikely that any significant deterrence will arise from this new legislation. One other hurdle that this law will have to overcome are the potential challenges to its constitutionality as it applies to drug sellers.



Rick Smith

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Jane S. Flaherty

SBA President: Alumni Association

By Jane S. Flaherty

Since last August, I have attended the monthly meetings of the Alumni Association, yes, our Alumni Association for Cleveland-Marshall College of Law. (I didn't even know we had one until I was invited to a meeting.) As the months progressed, I listened carefully to find out exactly what the Alumni Association is and what it wanted from me as your representative. The agenda each meeting included a spot called "SBA President's Report." So when my turn came up I gave a status report on what's going on here at C-M. Over the last semester, as I revealed news about student life at C-M, the seated Alumni began to realize that law students are alive and active at 18th & Euclid.

I was quickly placed on their newly formed membership committee, where several of us, including Alumni Coordinator Nancy Goldman

(LB 41), brainstormed ideas on how to boost our membership. (I say "our" membership because I plan to stay active in the Alumni Association after graduation as the representative for the class of 1988.) Last month you each received a formal letter from the committee inviting you to get involved. These letters mentioned two ideas which resulted from these meetings. These programs will directly benefit you as a student, should you choose to take advantage of them.

First, a mentorship program is being established. It is similar to the Cleveland Bar Association's Take-a-Law-Student-to-Lunch program in that each student will be matched up with an attorney in their interest. At this point the similarities end. Free advice is guaranteed, but a free lunch is not. The Alumni Association hopes the relationship continues for the duration of your law school years and beyond. As a symbiotic

relationship, both the attorney will be benefitted by returning something to their alma mater, and the student will gain insights to the "real world" long before they enter it. Since the student is a necessary ingredient to a successful mentorship program, your participation and comments are encouraged.

The second benefit to you as a student is FREE ADMISSION to any Alumni Association seminar. Take advantage of this now, for once you are an attorney, the least you'll pay for a seminar is \$50. There are two seminars in the works for this spring. Keep your eyes open for notices.

Lastly, I encourage you to join the Alumni Association and keep tabs on what's going on at Cleveland-Marshall after you graduate. Remember - the value of your degree is determined by the reputation of your school.

Diversity of Street Law Program Attracts Students

By Rick Smith

In 1975, through the efforts of Professor David Barnhizer in a linkup with The Georgetown University Law Center, the Street Law program arrived at C-M College of Law. C-M's program was chosen to be the first replication of the Georgetown program.

Today the Street law program has grown to 25 law schools throughout the nation. The common link among all of these schools is their urban settings. With that focus in mind the program attempts to involve high school students in issues ranging from urban education, due process and equal protection within everyday situations, to other public policy issues.

Since 1978 the Street Law program at C-M has been under the direction of Professor Elizabeth Dreyfuss. Dreyfuss stated that since becoming director her direction has been headed towards expansion of the program. Dreyfuss cited such expansion through the number of schools served, the inception of the mock trial program in high schools, and a diversion program where youngsters upon completion, have their records cleared. Those are just three of several areas where Street Law has entered into.

Another major project that has grown out of

the Street Law program is the Law and Public Service Magnet High School. The school opened its doors in 1982 with 150 ninth graders. The project is a joint venture with the Cleveland Schools and a combined effort of the law school, the College of Social Services, and the College of Urban Affairs.

The curriculum in the magnet school is unique in that each student must take five major subjects in the ninth and tenth grade (this is somewhat heavier of a load than the average ninth and tenth grade student carries). The classes include introductory courses in law, urban studies, research techniques, and also thematic approaches to such courses as math and science. Dreyfuss stated that with this curriculum "we can show a positive affect on kids in reading comprehension, and the first two classes have gotten into college at a higher proportion than the (rest of the Cleveland School) District. Dreyfuss also stated that the attendance rate is higher at the Magnet School than at any other school in the District.

The school now has an enrollment of 382 students. Additionally, the teachers that teach at the Magnet step forward on their own to participate in the program which requires a heavier time

commitment than the average teaching position. Dreyfuss believes that "it is probably one of the best school climates." To support this statement she mentioned a mediation program which has allowed students to resolve their problems in peaceful ways and maintain a positive attitude about their school.

For many law students the street law program gives them an opportunity to get some diversity from their normal law school curriculum. Dreyfuss said that students participate in the program for a variety of reasons. Some seek to improve their speaking skills, others desire to pursue areas they have an interest in (for example international law), and still others she said, participate for idealistic reasons. Participating law students also have the opportunity to provide high school students with new and unique curriculum.

Upon completion of the program Dreyfuss ideally expects that a law student would become more aware of the issues in public education, obtain a lifelong ability to contribute to allowing lay people to understand the law, and finally, better understand the due process and equal protection aspects of constitutional law.

Malpractice:

Legal Profession is Quick to Sue Brethren

Malpractice insurance premiums for lawyers are skyrocketing as the number of lawyers sued reaches epidemic proportions.

Professor William Tabac was sued for malpractice and learned firsthand what a dirty—and big—business lawyers suing each other has become.

"Legal malpractice claims are definitely here to stay, and they are business as usual for lawyers, which surprised the hell out of me," Tabac said. "I thought it was the real aberrational situation where a lawyer was sued for malpractice."

Tabac teaches commercial law, secured transactions, consumer remedies and was handling a domestic relations case in his part-time practice. A former client sued him, not unexpectedly, he said.

Tabac says he found the whole experience extremely unpleasant. "It really hurt," he said, "I had been exposed to [the movie] 'Body Heat' where the lawyer who had been sued for malpractice was sort of the scum of the earth. Everyone shied away from him, and I thought, my God, I'm a pariah now, having been sued for malpractice."

As a result, Tabac decided to launch his own investigation nationwide to learn the facts about legal malpractice. The attorney traveled throughout the country about a year ago, interviewing other lawyers about being sued and themselves suing other attorneys. Surprisingly, he found that the attorneys being sued did not hesitate to talk with him. "They really opened up and were happy to talk about their experiences," Tabac said. One result of his research was an article on legal malpractice in the May 3 edition of the New York Times Magazine.

Tabac found a veritable epidemic of lawyers suing each other. "It's raining malpractice," he said. "It seems to be a cost of doing business, and part of the territory of being a lawyer."

California presents a good example. Tabac found that each year one out of every 6 attorneys has a claim filed against him or her, and the number is increasing. "Nationally, it's about one out of 16," he said.

He also found that it's common for attorneys to be sued and that it's not just the ones doing a bad job. "No lawyer is immune...the most experienced lawyer gets the most claims," Tabac explained. "No one really knows why. It doesn't matter who you are, how long you've been in practice, how good you are, how bad you are—you can be hit with a malpractice claim."

Why the explosion in claims against attorneys? Tabac suggests that with the number of attorneys increasing, the pie to be divided up has been shrinking, and lawyers have to look for other cases. "There are lots of hungry lawyers, unfortunately, and there always have been."

Also, lawyers, unlike physicians, are not reluctant about testifying against each other. "It's their way of life to appear in court and represent clients," Tabac said.

The lawyer-suing-lawyer epidemic has spawned its own specialties. "There are lots of lawyers," Tabac said. "Some specialize in suing other lawyers. They're just legal malpractice specialists. Then there are the lawyers who are defending other lawyers who are sued for malpractice. And it's increasing, too."

The causes for a client to sue an attorney stem from Tabac's definition of legal malpractice. It is a situation "wherein a lawyer does not meet the standard of care that a reasonable lawyer should provide in serving his or her client."

Busy lawyers today, especially the good ones, are susceptible to such litigation. "They may be so busy that they don't have the time to pay the amount of attention to the client that the client feels he or she should have," Tabac said. "So the client ends up suing because he or she feels that the attorney didn't pay enough attention."

Tabac compared the situation with that in the medical profession. With the decrease in general practitioners, there's been a decrease in the bedside manner," he said, a feeling of a loss of attention. "If the client gets a bad result in a case... the client may feel that the lawyer did not treat him properly because the lawyer—not that he screwed up or anything—did not treat him more attentively."

Lawyers have mixed feelings about the legal malpractice epidemic and its effects. "Some lawyers are appalled at what's going on, believing that they shouldn't be suing each other," Tabac said. "And other lawyers think it's a good thing because—look, if someone else screws up, that's what they're there for, to help a client collect from that person. So if a lawyer screws up, then they should represent a client against that person, lawyers as well."

Where many claims arise are with the statutes of limitation, Tabac said. In Ohio, a case must be filed within two years of occurrence of the action or discovery of the injury. If the attorney misses the deadline, he may end up having to



Professor William L. Tabac

pay damages that might have been awarded in the original case.

As in medicine, legal malpractice insurance costs are soaring and forcing some practitioners out of their field. "It's not mandatory that a lawyer have malpractice insurance," Tabac explained, "and the malpractice insurance premiums for lawyers are soaring just as they are for physicians. What it will do, and what it has done, is drive lawyers from the practice of law."

To compound the difficulties, insurance companies tend to drop individuals who have more than one claim against them and this situation is a reality when the client is an attorney, said Tabac.

Tabac said that an estimated 50 percent of the lawyers in California are "going bare" or do not have insurance. The cost of this, in the long run, will be borne by the client, Tabac said. Clients may not be able to collect what they're due when a lawyer does commit malpractice because there won't be an insurance company with deep pockets to pay the claim.

Oregon has taken a different approach. Tabac said every lawyer practicing in that state must have malpractice insurance, and every lawyer—no matter how many claims have been filed against him or her—pays the same premium. In this situation, "lawyers who have no claims against them are subsidizing lawyers who have many claims filed against them," Tabac said.

Legal malpractice does have its positive side, Tabac asserts. Lawyers suing other attorneys for malpractice can cause more care to be taken in the profession. "One salutary effect, many people feel, of the explosion in malpractice claims against lawyers is that those lawyers who are truly incompetent will tend to be weeded out and that lawyers will practice more carefully as a result of this awareness that they can be sued just like anybody else."

"Lawyers will charge higher fees, will become [more] careful about what they do because they know they're no longer immune from the weapons that they wield on behalf of their clients," Tabac said. The effects can be negative

continued on page 11

Trial Advocacy Program Begins; Considered Successful

By Professor Jack A. Guttenberg

Imagine coming back to school two weeks early, working eight to nine hours a day for two straight weeks, performing daily, watching your performances on television, and, at the end of all of this, conducting a trial before a real judge in a real courtroom.

This is exactly what 59 Cleveland-Marshall law students did this past January. They were enrolled in the short intensive course in Trial Advocacy which started Jan. 3, and ran until Jan. 17. This course was like no other course ever taught at Cleveland-Marshall.

Class met every day, except for the one weekend in between, from about 3:30 to 9 p.m. The course was divided into three parts; the readings, the lectures and demonstrations, and the student simulations. The lectures and demonstrations were given on all aspects of conducting a trial from jury selection, opening statements, presenting evidence to closing arguments. These lectures and demonstrations were conducted by several Cleveland-Marshall faculty members and judges. Each day there was a lecture and/or demonstration given on a different topic which lasted for about an hour and a half.

The primary focus of the course, however, was on the student simulations. Over the two weeks of the course each student worked through two separate cases; a criminal case the first week and a civil personal injury action the second week. For the first week the students were divided into eight person simulation groups led by at least one, and often two, experienced trial lawyers. Each student performed some part of the trial each day and immediately after their performance received feedback from the attorney/s working with them. In addition, each student had half of their performances video taped and these taped performances were reviewed by the student and a different attorney after the live performance critique.

The second week the student simulation groups were reduced to six students and each pair of students represented one of the parties in the three party civil case. Again the students received feedback from the attorneys leading their group and half of their performances were video taped and reviewed with them by a different lawyer. The simulation groups provided the students with the opportunity to work closely with more than 35 experienced trial lawyers and judges in order to develop important trial skills. The two simulation cases required the students to mesh law, facts, and evidence into a cohesive and convincing trial strategy. Students were often seen in the halls, the atrium, and the lounge discussing their cases among themselves and with the lawyers working with their small simulation groups.

The two weeks of hard work culminated in the final trials conducted on the last weekend of the course in the courtrooms of the Justice Center before real Common Pleas and Municipal court

judges. The student lawyers tried the personal injury case they had been working on the second week. Each party had to obtain their own witnesses and prepare them for trial. These trials lasted about four to five hours and afterwards the judge and attorney assigned to each courtroom offered the students feedback on their performances.

Beyond learning valuable trial skills the students experienced the intensity and single mindedness of what a real trial is like. Many students related that they had never worked so hard.

This hard work paid off. Over the two weeks the students' skills and confidence improved significantly. The judges and attorneys who worked with the students were very impressed with their level of preparation and performance.

All who participated in the two week Trial Advocacy course, the judges, lawyers, and students, agreed that this was a totally unique and very rewarding experience. Many of the judges and lawyers have already volunteered their services for next year.

Juvenile Death Penalty Pending in Highest Court

By Greg Foliano

The death penalty for juveniles may die with a whimper instead of a bang, according to Cleveland-Marshall Professor Victor L. Streib.

"The death penalty for juveniles is disappearing, but to get rid of it, go to the state legislatures not the Supreme Court," Streib said during a National Lawyers Guild sponsored speech recently. Streib is the author of *Death Penalty for Juveniles*.

On Nov. 9, 1987, Streib appeared in front of the Supreme Court in *Thompson v. Oklahoma*, which addressed the problem of the death penalty for juveniles.

William Wayne Thompson was only 15 when he, his brother, and two friends murdered his sister's ex-husband. He was found guilty of first degree murder and sentenced to death.

After calls from Thompson, his attorneys, and a midnight call from Thompson's mother, Streib, who normally does not get involved in cases, agreed to help write the petition for certiorari.

"I agreed to write the petition knowing that the odds were about 1,000 to one that it would be granted. They just normally don't grant direct appeals from the Oklahoma state court," Streib said. "Of course, it was granted."

"The argument that we raised on the constitutionality question really goes to the reasons for the death penalty and ties them over to juveniles," Streib said.

According to Streib, one argument that seemed to catch the Court's attention is that juveniles are denied almost all rights and privileges. In Oklahoma, Wade Thompson was too young to vote, drink, drive a car, join the army, play bingo in the basement of a church, get married, or even buy a house, Streib said. According to Streib's argument, this is not because he's physically unable to do these things, but is because the state is unsure if he's emotionally able to do these things.

"If there's a question of certain level of

which one becomes emotionally mature enough to be treated as an adult, Oklahoma's answered that question," Streib said.

Thompson also advanced the theory that the death penalty for juveniles is cruel and unusual punishment. Out of 1,500 murders by juveniles only two or three get the death sentence, according to Streib.

Also, in the parts of the world which still have the death penalty most set the age at 18. According to Streib, Libya, South Africa, Russia, and China all have a minimum age of 18. Along with that most groups oppose the death penalty for juveniles, including the American Bar Association and the American Law Institute.

"Everyone agrees there must be a minimum age somewhere, but the question is where to set it," Streib said. "the debate is where is the line, and 18 is the most commonly drawn line."

According to Streib, what the Court may do is rule that they don't know what the minimum age for the death penalty is but 15 is too young. On the other hand, they may not even get to the issue. During the sentencing hearing the state used photos of the body to inflame the jury. Thompson has assigned this as error and according to Streib, that issue could be a winner. Because of this second issue, the court may never have to reach the issue on juvenile death penalty. There are 29 juveniles on death row around the country, but that number is down from 37 in 1986. According to Streib, the death penalty for juveniles is declining even though the number of adults on death row around the country is increasing. The Thompson decision is pending.

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Award Winners



Multi-award winner, Carol A. Jones relaxes after the 1986-87 Academic Honors Convocation with Associate Professor Janice Toran and other award winner Scott A. Spero. Jones picked up 5 top honors.

The Journal of Law and Health Sponsors AIDS Symposium

The Journal of Law and Health will be holding a symposium called AIDS: The Constitution and Public Health, on Friday March 11, 1988, from 9:00 a.m. until 4:00 p.m. in the Moot Court Room.

The symposium will be free to students and faculty of Cleveland State University. The fee for the luncheon program and a copy of the program's outline is \$25.00.

The symposium will be funded in part by a grant from the Educational Fund Committee of the National Health Lawyers Association. For more information on the program contact the Journal office at 687-4896.

Search for New C-M Dean Continues. Committee Eyes July 1st Selection

By Tony Soughan

The six month long, nationwide search for a new law school dean is coming down to the wire. The dean search committee's objective of placing a new dean by July 1 will be realized due to their strategic planning and long hours of work.

The committee members are Chairman Associate Professor Solomon Oliver Jr.; Associate Professor Janice Toran; Associate Professor Marjorie Kornhauser; Professor Arthur Landever; Associate Professor John Makdisi; Dean of College of Urban Affairs, David Sweet; Alumni representative, Terrence Graves; and student representatives Jane Flaherty and Harry Bernstein. The committee was formed in August 1987 after former dean Robert Bogomolny resigned in May.

Candidates were recruited in several ways. Advertisements were placed in various publications including the **ABA Journal**.

Committee members canvassed several conferences of the American Association of Law Schools, including special women's and minority law conferences. Nominations were also solicited from law school professors across the country, including a substantial effort to recruit minority candidates. Every minority law professor, associate professor or above, was sent a letter encouraging them to apply, or to nominate other minority candidates.

The committee received more than 100 nominations. Fourteen nominees were women. Of the nominees, about 50 submitted applications; four from women candidates. Although interim dean Elizabeth Moody was nominated, she does not intend to be a candidate.

The next step in the search is a two-stage process. During February and March, eight or nine candidates (five of whom have

been confirmed) will be invited to visit the law school for about a day and a half. During this time the candidates will meet in small groups with faculty, staff, and students. The candidate will also address a larger group on the "future directions in legal education with particular focus on the role of a school like Cleveland-Marshall."

A second round of interviews will take place in April, when about three to five candidates will be invited back for an extended visit. The committee hopes to conclude the interviewing process in late April with the intention of filling the position in June.

The committee is looking for several qualities in a new dean including intellectual leadership, ability to communicate with alumni, bench, and bar, both locally and nationally, ability to raise funds, and an ability to enhance library resources.

Justice Center Tours: *The Workings Behind the Giant Tube*

By Doug Davis

Despite being less than two miles from Cleveland-Marshall College of Law, few law students have discovered where Cleveland's Justice Center is and what goes on there.

Unless one has clerked for local attorneys, it is unlikely that a C-M student even knows where the Justice Center is; it's at the southwest corner of Ontario and Lakeside, downtown, the building with the huge black, tubular sculpture by Isamu Noguchi in front.

In an attempt to correct this lack of knowledge and experience with the Justice Center, the National Bar Association-Student Division and the Student Bar Association sponsored tours of the Center recently. The actual tours were conducted by wives of lawyers who belong to the Cleveland Bar Association.

Since many C-M grads will be spending a great deal of time at the Justice Center, **THE GAVEL** tagged along on the half-day tour to find out what goes on.

To start, the Justice Center is headquarters of the Cleveland Police Department. This also encompasses the police department's scientific laboratory and a temporary holding jail. The Center also is home to most of Cuyahoga County's Common Pleas Courts (29 of 31) and Cleveland's Municipal Courts (13).

At the police department, calls are taken and then dispatched, and with some luck and hard work, police officers may bring a suspected criminal into the Center for processing. Once a

suspect is brought to the Center, handcuffs are removed and police weapons are locked up. This reduces the probability of the weapons being used against the officers. The suspect's fingerprints and photographs are taken next.

After the prints and photos, the suspect gets a phone call, a talk with a detective and is then led to a lineup if an eyewitness is available. The lineup is shown through two-way glass twice, in a rearranged order the second time, to try and get a positive identification.

The suspect is then sent to Felony Court where a preliminary hearing can be set, and a judge determines if bond should be offered and at what amount. Later, the suspect goes before a grand jury who decides if there is enough evidence to indict the suspect. If so, then the suspect goes back to Felony Court where he is arraigned (he formally is told the charges against him), bond is set and a hearing date is set, unless the suspect pleads guilty. Even if a witness to a crime does not show up, the prosecutor still has the power to take the case to Common Pleas Court. The judge in a Felony Court cannot dismiss charges with prejudice. However, in Misdemeanor Court, a judge may dismiss charges with prejudice. Victims of crimes almost never show up for a suspect's arraignment.

According to the tour guides, this entire process can happen in as little as 24 hours, but most cases take longer, usually three to four months.

When suspects become prisoners in the temporary holding jail, they are first interviewed to find out where they should be placed in the lock-up. The police department segregates by sex, sexual preference, size, severity of crime and whether the prisoner claims to have AIDS. In addition, they get color-coded uniforms which indicate the level of risk involved with handling the prisoner.

Evidence is processed in an in-house laboratory. It is then tagged and saved for evidence in a later trial, if necessary. The laboratory also has ballistics and polygraph equipment.

After all of this, the suspect goes to trial. But, before this happens, the county already is trying to take care of the victims of crime. The Witness/Victim Service Center, Family Violence Program attempts to help those who have been victims of crime or domestic violence, said David H. Larsen, a senior therapist with the program.

The program has two functions: a short-term therapy and advocacy part and a long-term counseling part. On the advocacy, Larsen said the center acts much like a hand-holding service with the attorney walking the victim through all the

procedures. The criminal justice system can be "confusing and intimidating" to victims, he said.

Domestic violence presents special problems because of the situation, Larsen said. Since all the people involved live in the same home or will in the future, resolving the current legal issue doesn't fix the underlying problems existing in the home.

The programs also assist people who are filing claims under Ohio's Victim of Crime Law. This law is designed to help and compensate victims of crime.

Long-term therapy is available for victims of crime much as it is for perpetrators, Larsen said. The center learned that victims also benefit from long-term help.

After a brief look at Felony Court (a delay caused because of prisoner transfer problems and client counseling), the tour moved from the third floor to the twenty-second only to find out the trial we were supposed to observe wasn't started yet. So, down the elevators to Common Pleas Judge Stephanie Tubbs Jones's courtroom where, again, nothing was happening. However, the judge did come out to talk with us and then showed us her chambers, where most resolutions are finalized.

All pretrials are held in the judge's chambers and Judge Jones said she tries to settle as many as possible. Civil cases are assigned at the time of filing in the Clerk of Courts office on the first floor of the Center. The criminal cases are assigned as they come up on the computer, she said. Sometimes, a judge can decline to hear a case because of personal reasons, she said.

Most of the training a judge receives when first sitting on the bench is on the job, Judge Jones said. There is a three week judge school in Reno, Nevada, but most of the learning is through experience. Judge Jones was in a better position than some because she had extensive trial experience and was already sitting on the Municipal Court bench when she filled her current position. A Common Pleas Judge term lasts six years.

After exploring a jury room, the group then sat in on a trial in Judge Lillian J. Greene's courtroom. The case centered around a custody battle for a young girl. Attorneys from both sides of the case took turns asking a witness questions. Then, it was time to leave.

Tours of the Clerk of Courts office, the correction facility and the scientific laboratory were offered on the longer tours.

Remember, the Clerk of Courts office is on the first floor to the right of the information desk as you face north. If in doubt, ask someone at the desk.



Common Pleas Judge Stephanie Tubbs Jones talks to C-M students in her chambers.

FIRST AMENDMENT RIGHTS

Are They For Adults Only?

Free Speech in School Sponsored Activities Becomes Restricted

By Richard Loiseau

While Dan Rather, CBS TV news anchorman, may say it and Jack Anderson, the syndicated columnist, may write about it, the High School student may not. So said the U.S. Supreme Court in a January 1988 decision. Is school-sponsored speech less worthy of protection than any other? Are First Amendment rights for adults only? Does the decision affect college newspapers?

In a 5-3 decision the Court held that public school officials have substantial authority to censor school newspaper and other student expression.

The case, *Hazelwood School District v. Kuhlmeier*, involved a publication produced by journalism students at Hazelwood East High School near St. Louis, Mo. In May 1983, the school principal deleted two articles from the newspaper. One article profiled the experience of three Hazelwood students who had been pregnant; the second dealt with the impact of parental divorce on students. To preserve the identities of the girls in the first piece, the editors used pseudonyms. However, the principal believed that they were still identifiable, that the article was too revealing for younger students and that its overall depiction of teenage pregnancy was too affirmative. In the second piece, a student gave a touching story of her family life when she complained that her father spent too much time "out of town on business or out late playing cards with the guys". Again the principal objected because he found the article biased in that it did not expose the father's viewpoint.

The student editors sued on the ground that their First Amendment rights to free expression were violated. In a 5-3 decision the Court held that public school officials have substantial authority to censor school newspaper and other student expression. First Amendment rights, the court said, come into play 'only when the decision to censor a school sponsored publication, theatrical production, or other vehicle of student expression has no valid educational purpose...'. Justice Byron White, writing for the majority, explained that, while the First Amendment bars a school from silencing certain kinds of student expression, it did not require a school to actively promote such expression in plays and publications produced under its auspices.

Such school-sponsored newspapers and similar activities aren't intended as a public forum for student views, said the court, but are part of the curriculum and must be subject to official control to meet the purposes of such programs. The court balanced the student rights against the principal's pedagogical concerns which it found legitimate. In the article on teenage pregnancy, one student was quoted as saying that the experience [her pregnancy] has made her 'a more responsible person' and she feels that '... now I am a woman'. The court sided with the principal that the privacy of the pregnant students described in the article was not protected, that the younger students would be exposed to 'inappropriate' discussion of sex and birth control. In a vigorous dissent, Justice William Brennan wrote that the censorship does "... in no way further the curricular purposes of a student newspaper, unless one believes that the purpose of the school newspaper is to teach students that the press ought never report bad news, express unpopular views or point a thought that might upset its sponsors".

...censorship does "... in no way further the curricular purposes of a student newspaper, unless one believes that the purpose of the school newspaper is to teach students that the press ought never report bad news, express unpopular views or point a thought that might upset its sponsors".

schools around the nation to censor anything that personally offend them.

The court decision continues the recent trend to curtail the rights of high school students. It is quite a change in direction from the 1969 landmark case, *Tinker v. Des Moines School District*, 393 U.S. 503 (1969). There, several high school and junior high school students were suspended for wearing black armbands as a symbol of opposition to the Vietnam War despite a rule by school officials forbidding the wearing of such armbands. The U.S. Supreme Court held that the prohibition on armbands violated the students'

First Amendment rights. What was being suppressed was not 'actually or potentially disruptive conduct', but rather, something that was nearly 'pure speech'. The authorities claimed to have acted out of a fear to avoid controversy. The court disagreed; this fear was not a valid reason

"The undoubted freedom to advocate unpopular and controversial issues in schools and classrooms must be balanced against the society's countervailing interest in teaching students the boundaries of socially appropriate behavior".

for banning the expression. "Undifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression". Students do not 'shed their constitutional rights to freedom of speech or expression at the school house gate.

However, it is accepted now that school authorities have a strong and valid interest in maintaining school discipline and in carrying out their educational mission. Hence, the pursuit of these goals will sometimes entitle the authorities to regulate speech in a way that would be permissible outside the school context. A recent case, *Bethel School District No. 403 v. Frazier* proved the point. In *Bethel*, a high school student addressing a high school assembly gave a speech that school authorities found lewd. The school authorities suspended the speaker. The court upheld the disciplinary action over the student's claim that they violated his freedom of expression. "The undoubted freedom to advocate unpopular and controversial issues in schools and classrooms must be balanced against the society's countervailing interest in teaching students the boundaries of socially appropriate behavior". When balanced in this way, the school interest in prohibiting 'vulgar and lewd speech'

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Externships Offer Worthwhile Mix for Students

Externships are courses that place Cleveland-Marshall students outside the law school where they can gain supervised experience working on real cases. All externships are in the public sector. Students may choose among placements with federal and state judges, the federal public defender and the U.S. Attorney. Assistant Dean Lifter coordinates the programs for the law school and can answer any questions about them.

The judicial externship program places upper level students with federal district and state appellate court judges. Under the supervision of the judge and regular clerks, the student researches and writes memos on cases before the court; the students also observe the workings of the court, gaining invaluable insights into the practice of law.

Judicial externships are available part-time (25 hours per week; 5 credit hours) and full-time (40 hours per week; 7 credit hours) during summer term. Only part-time is available during the fall and spring semesters (25 hours; 10 credit hours).

Applicants for the judicial externship must have completed 45 credit hours prior to the start of the externship and must have completed

substantially all of the core curriculum. Grade point averages must be 2.50 or higher.

Applicants for this summer should submit 1) a resume, 2) a writing sample, 3) a brief statement of interest and 4) a release of their academic record by March 4 to Assistant Dean Lifter, LB 121.

The federal public defender externship began this past year. Two students are selected each term to work in the federal public defender's office. A weekly seminar is conducted by Adjunct Professor Edward Marek. Students in the program are expected to work about 10 to 12 hours per week in addition to the seminar. This externship is worth 4 credit hours.

Applicants must have completed the core curriculum, criminal procedure and evidence. Applications need a statement of interest in the program and a release of academic records.

This program is available in the fall and spring semesters but not the summer.

The U.S. Attorney externship has just begun this spring. Students are placed in the U.S. Attorney's office. In addition to working on cases, the students participate in a seminar on federal practice led by an Assistant U.S. Attorney. The externs will be assigned to the civil and criminal divisions in alternating semesters: appellate work of the division will be included in the externship.

Students are expected to work 10 to 12 hours per week in this program in addition to the seminar while earning four credit hours.

Applicants must have completed the core curriculum with criminal procedure as a pre- or co-requisite for enrollment in the criminal division. Federal jurisdiction is a pre- or co-requisite for the civil division. Grade point averages must be 2.50 or higher.

Since selected students must go through a lengthy security clearance process, applications for fall 1988 are due this spring. The fall assignment will be in the criminal division. Interested students must contact Assistant Dean Lifter by March 18.

The externships are graded on a pass-fail basis. In the event more students apply than can be accepted in any given term, preference will be given to 1) students who have not previously participated in another externship, 2) graduating students, 3) students who have completed all prerequisites. Other factors to be considered include grade point average, work experience and expressed interests.

Students may enroll for more than one externship during law school but may take only one per semester. However, 70 of the 87 hours required for graduation must be non-clinical courses.

An additional externship-like program is the juvenile law practicum directed by Professor Robert Willey, LB 163. Along with a seminar in juvenile law students are assigned to one of several agencies involved with Juvenile Court. The two-term, four-hour course is graded on the regular scale.

First Amendment Rights

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outweighed whatever First Amendment interests the student might have had.

Ironically, Justice White joined the majority in *Tinker*. He distinguished Hazelwood in that the principal's action was 'reasonably related' to pedagogical concerns. Such concerns, he explained might cover work that is 'poorly written, inadequately researched, biased or prejudiced, vulgar or profane, or unsuitable for immature audiences'.

Constitutional Law experts seem to agree that this decision does not affect freedom of expression in the broader sense, as we know it. "It does not even involve college students", said Arthur Miller of Harvard Law School. It certainly dealt a crushing blow to young aspiring reporters. As one high school student put it 'How can they teach us responsibility if they are not going to give it to us'?

Indeed.

Next GAVEL Deadline...

*...is Friday,
March 18, 1988*

Woman's Law Caucus Opens Speaker Series:



Barbara Kacir, a local attorney for Jones, Day, Reavis & Pogue and Cheryl O'Brien of the Woman's Law Caucus get together recently during a caucus sponsored speaker series featuring Kacir.

***Senior Partner
at Jones, Day
featured:***

By Sheila M. McCarthy

Reflecting on the challenges of women in the legal profession, Barbara Kacir, a practicing attorney in Cleveland for 20 years, recently spoke in the initial Women's Law Caucus speaker series, *Women in Law*.

In the spring of 1967, fresh out of the University of Michigan Law School, Kacir entered the Cleveland legal community as an associate with Arter & Hadden. At this time, Kacir was one of only two female attorneys practicing in any of the big law firms. Seven years later, Kacir was promoted to partner where she remained until 1979, when she left to become a partner with Jones, Day, Reavis & Pogue. She is now a senior partner in the litigation department.

Over the years, Kacir has seen Cleveland's legal community undergo many compositional changes. Today, the Cleveland Bar Association has 800 female members, representing 15 percent

Becoming a partner involves evaluation of both objective and subjective criteria. The objective criteria includes evaluation of 1) work product skills, 2) ability to handle a case, and 3) client satisfaction. Kacir said in subjective evaluation at Jones, Day, associates are asked: "If you had a major matter of a client of yours, would you give it to (the potential partner) to handle it on their own?" When the answer is yes, then chances are that associate is ready to become a partner.

...attorneys at big firms are provided the opportunity to work with the most exhilarating legal issues existing today...

Typically, big firm lawyers work longer hours than lawyers from smaller firms. They also get paid more. Money, however, is not solely the motivating factor to work hard. According to Kacir, attorneys at big firms are provided the opportunity to work with the most exhilarating legal issues existing today, which promotes hard work.

Kacir said late entries and second careers have natural advantages; these characteristics are not barriers to employment. Law firms look for people with street smarts and a sense of pragmatism. In the first few years, she said older associates may find it difficult to tolerate living through this period. Typical beginning assignments include library research, organizing documents and summarizing depositions.

The development of alternatives to partner-

ship has created a variety of new career choices for those who wish to practice law with less intensity. For example, Jones, Day has a senior attorney department for those who have specialized skills, and also a staff attorney program which acts as a counterpart to the associates.

According to Kacir, "women have been treated, evaluated, paid and promoted the same as men have been." In fact, when she entered the area of corporate litigation, being the only woman was, to her, an advantage since male litigators did not know how to deal with a female trial lawyer. Kacir did experience some social discrimination as she carved her way to the top. Law firms did change their practices: moving annual golf outings and Christmas parties out of the men's only clubs. She said the Union Club now allows women to use the front door.

Law firms developed new policies as the number of female attorneys increased, particularly in the areas of maternity leave and nepotism. According to Kacir, women attorneys are too good and contribute too much to the success of

"women have been treated, evaluated, paid and promoted the same as men have been."

"If you had a major matter of a client of yours, would you give it to (the potential partner) to handle it on their own?" When the answer is yes, then chances are that associate is ready to become a partner.

of the bar membership. At Jones, Day, 217 of the 828 attorneys are women. Similarly, of the most recent class of law school graduates hired as associates by Jones, Day, 34 percent were women. In the Cleveland office, seven of 26 recently promoted to partner were women.

big law firms to not be taken seriously. She further stated that women do not need to be nurtured and sheltered, such treatment would create fundamental differences between gender, thereby preventing equality.

United States District Judge Ann Aldrich will be the second lecturer in the series Feb. 24 at noon in room 11.

Computer Group Seeks Members: Attempts to Expand Legal Research Techniques

By Edward Cleary

Are you aware that you can use a computer to check your citation form? That you can create a complete table of cases with the push of a button? That spelling and grammar mistakes can be corrected without ever opening a law dictionary?

These and other uses have led several Cleveland-Marshall students to propose the formation of a computer-users group tailored to the expanding area of legal uses. Such a group would serve to teach any interested student not only the basics of using a computer in the law school and law office environment, but to generally expand the field of computer use in these areas.

An organizational meeting for anyone interested in the use of computers in the field of legal practice will be at 5 p.m. Feb. 17, in room 12.

The application of computer technology to the practice of law is potentially the greatest single factor in setting today's law student apart from those already in practice. The advent of Lexis, Westlaw, word processing, and computerized billing methods are creating a revolution in law offices throughout the country.

Any law student that can capitalize on this technology will find him or herself at a distinct competitive advantage. The informed computer

user will develop increased productivity and will enhance research abilities. In short, he will be both more valuable to his firm and a better advocate to his client.

The goals of this group are to make Cleveland-Marshall students more attractive as potential employees by developing skills in this area. A number of students already own personal computers, and those that do not have familiarized themselves with them at school or at work. As a group there is a large pool of knowledge just waiting to be developed and made marketable.

The organization will not be limited to computer owners. Anyone with an interest is free to join. It is also not limited to students: computers can be just as intimidating to the uninitiated faculty member or the attorney already practicing.

The idea is to eventually provide a complete legal community resource from which anyone connected with the study or practice of law could either consult with or contribute, to establish Cleveland-Marshall as an authority in the area of legal computer applications.

Anyone interested in participating in this group can contact Edward Cleary at home at 671-4011, or by leaving a message in his mail slot.

Malpractice:

Legal Profession Quick to Sue

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in that the lawyers will hesitate sometimes in filing lawsuits that have merit. They may also inhibit the lawyer's ability to take a creative position on a case where the client may say "Hey, you stepped out of the ordinary way of doing things so you were careless." This "could chill creative lawyering," Tabac said.

Another fallout effect could be that young attorneys who can't afford to pay malpractice insurance premiums will practice only in very safe areas of law, such as those with no serious statutory deadlines.

Other negative effects Tabac envisions are a lessening of trust in the lawyer and client relationship and fewer persons entering the field as a result of the fear of legal malpractice. Tabac assesses the chances of being sued this way: "Every young lawyer can expect to have at least three malpractice claims filed against him or her in a career."

Tabac found that more than 85 percent of malpractice cases against attorneys are settled before trial. "Lawyers are afraid of juries. They believe that juries don't like them, and they're probably right."

Tabac settled his own malpractice case by adjusting the client's fee. But he said he found the whole experience so difficult to deal with that he dropped cases he had pending against other attorneys.

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CLEVELAND STATE UNIVERSITY SMOKING POLICY

I. Smoking in any form is prohibited in any of the following enclosed public places.

- A. Classrooms
- B. Auditoriums, arenas, meeting rooms, and theaters
- C. Elevators, stairwells, bridges, and hallways
- D. Rest rooms
- E. Libraries

II. Smoking may occur only in spaces designated for that purpose and at least one smoking area will be designated in each building on campus. Smoking is permitted in University vehicles unless objected to by non-smokers. Spaces may be designated within the following areas:

- A. Cafeterias and other dining facilities, waiting areas, and lobbies when ventilation is sufficient to enable non-smokers to use the facility without interference.
- B. Enclosed offices, unless an individual's smoking interferes with other university community members.
- C. Residence hall rooms, if all occupants agree.
- D. One lounge in each building with two or more lounges.

III. In disputes arising under this policy, the rights of the nonsmoker shall be given preference.

IV. "No Smoking" signs will be prominently displayed in all non-smoking areas. All ashtrays shall be removed from areas where smoking is prohibited. Ashtrays will be placed by the entrance of non-smoking areas.

V. Overall responsibility for the implementation of this policy will rest with the Vice President for Administration and Student Affairs or designee. Although enforcement of the policy is the responsibility of each department head, every member of the University is required to abide by the Policy.